

No. 31696

MULTILATERAL

International Convention for the Protection of New Varieties of Plants of 2 December 1961, as revised at Geneva on 10 November 1972 and on 23 October 1978. Concluded at Geneva on 23 October 1978

Authentic texts: English, French and German.

Registered by the Secretary-General of the International Union for the Protection of New Varieties of Plants, acting on behalf of the Parties, on 17 March 1995.

MULTILATÉRAL

Convention internationale pour la protection des obtentions végétales du 2 décembre 1961, révisée à Genève le 10 novembre 1972 et le 23 octobre 1978. Conclue à Genève le 23 octobre 1978

Textes authentiques : anglais, français et allemand.

Enregistrée par le Secrétaire général de l'Union internationale pour la protection des obtentions végétales, agissant au nom des Parties, le 17 mars 1995.

**INTERNATIONAL CONVENTION¹ FOR THE PROTECTION OF
NEW VARIETIES OF PLANTS OF DECEMBER 2, 1961,² AS RE-
VISED AT GENEVA ON NOVEMBER 10, 1972,³ AND ON OCTO-
BER 23, 1978**

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¹ Came into force on 8 November 1981, i.e., one month after the date by which five States of which at least three were States Parties to the Convention of 1961 had deposited instruments of ratification, acceptance, approval or accession with the Secretary-General of the International Union for the Protection of New Varieties of Plants, in accordance with article 33 (1):

<i>Participant</i>	<i>Date of deposit of the instrument of ratification or acceptance (A)</i>	<i>Participant</i>	<i>Date of deposit of the instrument of ratification or acceptance (A)</i>
Denmark.....	8 October 1981	South Africa.....	21 July 1981
Ireland.....	19 May 1981	Switzerland.....	17 June 1981
New Zealand.....	3 November 1980	United States of America*.....	12 November 1980 A

Subsequently, the Convention came into force for the following States one month after the deposit of their instrument of ratification, accession or acceptance with the Secretary-General of the International Union for the Protection of New Varieties of Plants, in accordance with article 33 (2):

<i>Participant</i>	<i>Date of deposit of the instrument of ratification accession (a) or acceptance (A)</i>	<i>Participant</i>	<i>Date of deposit of the instrument of ratification accession (a) or acceptance (A)</i>
Japan*..... (With effect from 3 September 1982.)	3 August 1982 A	Italy..... (With effect from 28 May 1986.)	28 April 1986
Sweden..... (With effect from 1 January 1983.)	1 December 1982	Australia..... (With effect from 1 March 1989.)	1 February 1989 a
France*..... (With effect from 17 March 1983.)	17 February 1983	Poland..... (With effect from 11 November 1989.)	11 October 1989 a
Hungary..... (With effect from 16 April 1983.)	16 March 1983 a	Canada..... (With effect from 4 March 1991.)	4 February 1991
United Kingdom of Great Britain and Northern Ireland..... (With effect from 24 September 1983.)	24 August 1983	Czechoslovakia..... (With effect from 4 December 1991.)	4 November 1991 a
Israel..... (With effect from 12 May 1984.)	12 April 1984 a	Finland..... (With effect from 16 April 1993.)	16 March 1993 a
Netherlands*..... (For the Kingdom in Europe. With effect from 2 September 1984.)	2 August 1984 A	Norway..... (With effect from 13 September 1993.)	13 August 1993 a
Federal Republic of Germany..... (With effect from 12 April 1986. With a declaration of application to Berlin (West).)	12 March 1986	Austria..... (With effect from 14 July 1994.)	14 June 1994 a
		Uruguay..... (With effect from 13 November 1994.)	13 October 1994 a
		Argentina..... (With effect from 25 December 1994.)	25 November 1994 a

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In addition, the following notifications of succession have been effected with the Secretary-General of the International Union for the Protection of New Varieties of Plants on the dates indicated hereinafter:

12 January 1993

Slovakia

(With effect from 1 January 1993, the date of the succession of State.)

12 January 1993

Czech Republic

(With effect from 1 January 1993, the date of the succession of State.)

Furthermore, the following notification of territorial application has been effected with the Secretary-General of the International Union for the Protection of New Varieties of Plants on the date indicated hereinafter:

8 August 1986

Netherlands

(In respect of Aruba. With effect from 8 November 1986.)

Moreover, the following notifications under article 34 (2) have been effected with the Secretary-General of the International Union for the Protection of New Varieties of Plants on the dates indicated hereinafter:

6 November 1981

France

(With effect from 6 December 1981. In its relations with Ireland, New Zealand and the United States of America.)

19 November 1981

Belgium

(With effect from 19 December 1981.)

* See p. 332 of this volume for the texts of the notifications and declarations made upon ratification and acceptance

² United Nations, *Treaty Series*, vol. 815, p. 89.

³ See p. 460 du présent volume.

- Article 33: Entry Into Force ; Closing of Earlier Texts
 Article 34: Relations Between States Bound by Different Texts
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 Information to be Published
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THE CONTRACTING PARTIES.

Considering that the International Convention for the Protection of New Varieties of Plants of December 2, 1961, amended by the Additional Act of November 10, 1972, has proved a valuable instrument for international cooperation in the field of the protection of the rights of the breeders,

Reaffirming the principles contained in the Preamble to the Convention to the effect that:

(a) they are convinced of the importance attaching to the protection of new varieties of plants not only for the development of agriculture in their territory but also for safeguarding the interests of breeders,

(b) they are conscious of the special problems arising from the recognition and protection of the rights of breeders and particularly of the limitations that the requirements of the public interest may impose on the free exercise of such a right,

(c) they deem it highly desirable that these problems, to which very many States rightly attach importance, should be resolved by each of them in accordance with uniform and clearly defined principles,

Considering that the idea of protecting the rights of breeders has gained general acceptance in many States which have not yet acceded to the Convention,

Considering that certain amendments in the Convention are necessary in order to facilitate the joining of the Union by these States,

Considering that some provisions concerning the administration of the Union created by the Convention require amendment in the light of experience,

Considering that these objectives may be best achieved by a new revision of the Convention,

Have agreed as follows:

Article 1

Purpose of the Convention; Constitution of a Union; Seat of the Union

(1) The purpose of this Convention is to recognise and to ensure to the breeder of a new plant variety or

to his successor in title (both hereinafter referred to as "the breeder") a right under the conditions hereinafter defined.

(2) The States parties to this Convention (hereinafter referred to as "the member States of the Union") constitute a Union for the Protection of New Varieties of Plants.

(3) The seat of the Union and its permanent organs shall be at Geneva.

Article 2

Forms of Protection

(1) Each member State of the Union may recognise the right of the breeder provided for in this Convention by the grant either of a special title of protection or of a patent. Nevertheless, a member State of the Union whose national law admits of protection under both these forms may provide only one of them for one and the same botanical genus or species.

(2) Each member State of the Union may limit the application of this Convention within a genus or species to varieties with a particular manner of reproduction or multiplication, or a certain end-use.

Article 3

National Treatment; Reciprocity

(1) Without prejudice to the rights specially provided for in this Convention, natural and legal persons resident or having their registered office in one of the member States of the Union shall, in so far as the recognition and protection of the right of the breeder are concerned, enjoy in the other member States of the Union the same treatment as is accorded or may hereafter be accorded by the respective laws of such States to their own nationals, provided that such persons comply with the conditions and formalities imposed on such nationals.

(2) Nationals of member States of the Union not resident or having their registered office in one of those States shall likewise enjoy the same rights

provided that they fulfil such obligations as may be imposed on them for the purpose of enabling the varieties which they have bred to be examined and the multiplication of such varieties to be checked.

(3) Notwithstanding the provisions of paragraphs (1) and (2), any member State of the Union applying this Convention to a given genus or species shall be entitled to limit the benefit of the protection to the nationals of those member States of the Union which apply this Convention to that genus or species and to natural and legal persons resident or having their registered office in any of those States.

Article 4

Botanical Genera and Species Which Must or May be Protected

(1) This Convention may be applied to all botanical genera and species.

(2) The member States of the Union undertake to adopt all measures necessary for the progressive application of the provisions of this Convention to the largest possible number of botanical genera and species.

(3) (a) Each member State of the Union shall, on the entry into force of this Convention in its territory, apply the provisions of this Convention to at least five genera or species.

(b) Subsequently, each member State of the Union shall apply the said provisions to additional genera or species within the following periods from the date of the entry into force of this Convention in its territory:

- (i) within three years, to at least ten genera or species in all;
- (ii) within six years, to at least eighteen genera or species in all;
- (iii) within eight years, to at least twenty-four genera or species in all.

(c) If a member State of the Union has limited the application of this Convention within a genus or species in accordance with the provisions of Article 2(2), that genus or species shall nevertheless, for the purposes of subparagraphs (a) and (b), be considered as one genus or species.

(4) At the request of any State intending to ratify, accept, approve or accede to this Convention, the Council may, in order to take account of special economic or ecological conditions prevailing in that State, decide, for the purpose of that State, to reduce the minimum numbers referred to in paragraph (3), or to extend the periods referred to in that paragraph, or to do both.

(5) At the request of any member State of the Union, the Council may, in order to take account of special difficulties encountered by that State in the fulfilment of the obligations under paragraph (3)(b), decide, for the purposes of that State, to extend the periods referred to in paragraph (3)(b).

Article 5

Rights Protected; Scope of Protection

(1) The effect of the right granted to the breeder is that his prior authorisation shall be required for

- the production for purposes of commercial marketing
- the offering for sale
- the marketing

of the reproductive or vegetative propagating material, as such, of the variety.

Vegetative propagating material shall be deemed to include whole plants. The right of the breeder shall extend to ornamental plants or parts thereof normally marketed for purposes other than propagation when they are used commercially as propagating material in the production of ornamental plants or cut flowers.

(2) The authorisation given by the breeder may be made subject to such conditions as he may specify.

(3) Authorisation by the breeder shall not be required either for the utilisation of the variety as an initial source of variation for the purpose of creating other varieties or for the marketing of such varieties. Such authorisation shall be required, however, when the repeated use of the variety is necessary for the commercial production of another variety.

(4) Any member State of the Union may, either under its own law or by means of special agreements under Article 29, grant to breeders, in respect of certain botanical genera or species, a more extensive right than that set out in paragraph (1), extending in particular to the marketed product. A member State of the Union which grants such a right may limit the benefit of it to the nationals of member States of the Union which grant an identical right and to natural and legal persons resident or having their registered office in any of those States.

Article 6

Conditions Required for Protection

(1) The breeder shall benefit from the protection provided for in this Convention when the following conditions are satisfied:

(a) Whatever may be the origin, artificial or natural, of the initial variation from which it has resulted, the variety must be clearly distinguishable by one or more important characteristics from any other variety whose existence is a matter of common knowledge at the time when protection is applied for. Common knowledge may be established by reference to various factors such as: cultivation or marketing already in progress, entry in an official register of varieties already made or in the course of being made, inclusion

in a reference collection, or precise description in a publication. The characteristics which permit a variety to be defined and distinguished must be capable of precise recognition and description.

(b) At the date on which the application for protection in a member State of the Union is filed, the variety

- (i) must not—or, where the law of that State so provides, must not for longer than one year—have been offered for sale or marketed, with the agreement of the breeder, in the territory of that State, and
- (ii) must not have been offered for sale or marketed, with the agreement of the breeder, in the territory of any other State for longer than six years in the case of vines, forest trees, fruit trees and ornamental trees, including, in each case, their rootstocks, or for longer than four years in the case of all other plants.

Trials of the variety not involving offering for sale or marketing shall not affect the right to protection. The fact that the variety has become a matter of common knowledge in ways other than through offering for sale or marketing shall also not affect the right of the breeder to protection.

(c) The variety must be sufficiently homogeneous, having regard to the particular features of its sexual reproduction or vegetative propagation.

(d) The variety must be stable in its essential characteristics, that is to say, it must remain true to its description after repeated reproduction or propagation or, where the breeder has defined a particular cycle of reproduction or multiplication, at the end of each cycle.

(e) The variety shall be given a denomination as provided in Article 13.

(2) Provided that the breeder shall have complied with the formalities provided for by the national law of the member State of the Union in which the application for protection was filed, including the payment of fees, the grant of protection may not be made subject to conditions other than those set forth above.

Article 7

Official Examination of Varieties; Provisional Protection

(1) Protection shall be granted after examination of the variety in the light of the criteria defined in Article 6. Such examination shall be appropriate to each botanical genus or species.

(2) For the purposes of such examination, the competent authorities of each member State of the Union may require the breeder to furnish all the necessary information, documents, propagating material or seeds.

(3) Any member State of the Union may provide measures to protect the breeder against abusive acts of third parties committed during the period between the filing of the application for protection and the decision thereon.

Article 8

Period of Protection

The right conferred on the breeder shall be granted for a limited period. This period may not be less than fifteen years, computed from the date of issue of the title of protection. For vines, forest trees, fruit trees and ornamental trees, including, in each case, their rootstocks, the period of protection may not be less than eighteen years, computed from the said date.

Article 9

Restrictions in the Exercise of Rights Protected

(1) The free exercise of the exclusive right accorded to the breeder may not be restricted otherwise than for reasons of public interest.

(2) When any such restriction is made in order to ensure the widespread distribution of the variety, the member State of the Union concerned shall take all measures necessary to ensure that the breeder receives equitable remuneration.

Article 10

Nullity and Forfeiture of the Rights Protected

(1) The right of the breeder shall be declared null and void, in accordance with the provisions of the national law of each member State of the Union, if it is established that the conditions laid down in Article 6 (1) (a) and (b) were not effectively complied with at the time when the title of protection was issued.

(2) The right of the breeder shall become forfeit when he is no longer in a position to provide the competent authority with reproductive or propagating material capable of producing the variety with its characteristics as defined when the protection was granted.

(3) The right of the breeder may become forfeit if:

(a) after being requested to do so and within a prescribed period, he does not provide the competent authority with the reproductive or propagating material, the documents and the information deemed necessary for checking the variety, or he does not allow inspection of the measures which have been taken for the maintenance of the variety; or

(b) he has failed to pay within the prescribed period such fees as may be payable to keep his rights in force.

(4) The right of the breeder may not be annulled or become forfeit except on the grounds set out in this Article.

Article 11

Free Choice of the Member State in Which the First Application is Filed; Application in Other Member States; Independence of Protection in Different Member States

(1) The breeder may choose the member State of the Union in which he wishes to file his first application for protection.

(2) The breeder may apply to other member States of the Union for protection of his right without waiting for the issue to him of a title of protection by the member State of the Union in which he filed his first application.

(3) The protection applied for in different member States of the Union by natural or legal persons entitled to benefit under this Convention shall be independent of the protection obtained for the same variety in other States whether or not such States are members of the Union.

Article 12

Right of Priority

(1) Any breeder who has duly filed an application for protection in one of the member States of the Union shall, for the purpose of filing in the other member States of the Union, enjoy a right of priority for a period of twelve months. This period shall be computed from the date of filing of the first application. The day of filing shall not be included in such period.

(2) To benefit from the provisions of paragraph (1), the further filing must include an application for protection, a claim in respect of the priority of the first application and, within a period of three months, a copy of the documents which constitute that application, certified to be a true copy by the authority which received it.

(3) The breeder shall be allowed a period of four years after the expiration of the period of priority in which to furnish, to the member State of the Union with which he has filed an application for protection in accordance with the terms of paragraph (2), the additional documents and material required by the laws and regulations of that State. Nevertheless, that State may require the additional documents and material to be furnished within an adequate period in the case where the application whose priority is claimed is rejected or withdrawn.

(4) Such matters as the filing of another application or the publication or use of the subject of the application, occurring within the period provided for in paragraph (1), shall not constitute grounds for objection to an application filed in accordance with the foregoing conditions. Such matters may not give rise to any right in favour of a third party or to any right of personal possession.

Article 13

Variety Denomination

(1) The variety shall be designated by a denomination destined to be its generic designation. Each member State of the Union shall ensure that subject to paragraph (4) no rights in the designation registered as the denomination of the variety shall hamper the free use of the denomination in connection with the variety, even after the expiration of the protection.

(2) The denomination must enable the variety to be identified. It may not consist solely of figures except where this is an established practice for designating varieties. It must not be liable to mislead or to cause confusion concerning the characteristics, value or identity of the variety or the identity of the breeder. In particular, it must be different from every denomination which designates, in any member State of the Union, an existing variety of the same botanical species or of a closely related species.

(3) The denomination of the variety shall be submitted by the breeder to the authority referred to in Article 30(1)(b). If it is found that such denomination does not satisfy the requirements of paragraph (2), that authority shall refuse to register it and shall require the breeder to propose another denomination within a prescribed period. The denomination shall be registered at the same time as the title of protection is issued in accordance with the provisions of Article 7.

(4) Prior rights of third parties shall not be affected. If, by reason of a prior right, the use of the denomination of a variety is forbidden to a person who, in accordance with the provisions of paragraph (7), is obliged to use it, the authority referred to in Article 30(1)(b) shall require the breeder to submit another denomination for the variety.

(5) A variety must be submitted in member States of the Union under the same denomination. The authority referred to in Article 30(1)(b) shall register the denomination so submitted, unless it considers that denomination unsuitable in its State. In the latter case, it may require the breeder to submit another denomination.

(6) The authority referred to in Article 30(1)(b) shall ensure that all the other such authorities are informed of matters concerning variety denominations, in particular the submission, registration and

cancellation of denominations. Any authority referred to in Article 30(1)(b) may address its observations, if any, on the registration of a denomination to the authority which communicated that denomination.

(7) Any person who, in a member State of the Union, offers for sale or markets reproductive or vegetative propagating material of a variety protected in that State shall be obliged to use the denomination of that variety, even after the expiration of the protection of that variety, in so far as, in accordance with the provisions of paragraph (4), prior rights do not prevent such use.

(8) When the variety is offered for sale or marketed, it shall be permitted to associate a trade mark, trade name or other similar indication with a registered variety denomination. If such an indication is so associated, the denomination must nevertheless be easily recognizable.

Article 14

Protection Independent of Measures Regulating Production, Certification and Marketing

(1) The right accorded to the breeder in pursuance of the provisions of this Convention shall be independent of the measures taken by each member State of the Union to regulate the production, certification and marketing of seeds and propagating material.

(2) However, such measures shall, as far as possible, avoid hindering the application of the provisions of this Convention.

Article 15

Organs of the Union

The permanent organs of the Union shall be:

- (a) the Council;
- (b) the Secretariat General, entitled the Office of the International Union for the Protection of New Varieties of Plants.

Article 16

Composition of the Council; Votes

(1) The Council shall consist of the representatives of the member States of the Union. Each member State of the Union shall appoint one representative to the Council and one alternate.

(2) Representatives or alternates may be accompanied by assistants or advisers.

(3) Each member State of the Union shall have one vote in the Council.

Article 17

Observers in Meetings of the Council

(1) States not members of the Union which have signed this Act shall be invited as observers to meetings of the Council.

(2) Other observers or experts may also be invited to such meetings.

Article 18

President and Vice-Presidents of the Council

(1) The Council shall elect a President and a first Vice-President from among its members. It may elect other Vice-Presidents. The first Vice-President shall take the place of the President if the latter is unable to officiate.

(2) The President shall hold office for three years.

Article 19

Sessions of the Council

(1) The Council shall meet upon convocation by its President.

(2) An ordinary session of the Council shall be held annually. In addition, the President may convene the Council at his discretion; he shall convene it, within a period of three months, if one-third of the member States of the Union so request.

Article 20

Rules of Procedure of the Council; Administrative and Financial Regulations of the Union

The Council shall establish its rules of procedure and the administrative and financial regulations of the Union.

Article 21

Tasks of the Council

The tasks of the Council shall be to:

- (a) study appropriate measures to safeguard the interests and to encourage the development of the Union;

(b) appoint the Secretary-General and, if it finds it necessary, a Vice Secretary-General and determine the terms of appointment of each;

(c) examine the annual report on the activities of the Union and lay down the programme for its future work;

(d) give to the Secretary-General, whose functions are set out in Article 23, all necessary directions for the accomplishment of the tasks of the Union;

(e) examine and approve the budget of the Union and fix the contribution of each member State of the Union in accordance with the provisions of Article 26;

(f) examine and approve the accounts presented by the Secretary-General;

(g) fix, in accordance with the provisions of Article 27, the date and place of the conferences referred to in that Article and take the measures necessary for their preparation; and

(h) in general, take all necessary decisions to ensure the efficient functioning of the Union.

Article 22

Majorities Required for Decisions of the Council

Any decision of the Council shall require a simple majority of the votes of the members present and voting, provided that any decision of the Council under Articles 4(4), 20, 21(e), 26(5)(b), 27(1), 28(3) or 32(3) shall require three-fourths of the votes of the members present and voting. Abstentions shall not be considered as votes.

Article 23

Tasks of the Office of the Union; Responsibilities of the Secretary-General; Appointment of Staff

(1) The Office of the Union shall carry out all the duties and tasks entrusted to it by the Council. It shall be under the direction of the Secretary-General.

(2) The Secretary-General shall be responsible to the Council; he shall be responsible for carrying out the decisions of the Council. He shall submit the budget for the approval of the Council and shall be responsible for its implementation. He shall make an annual report to the Council on his administration and a report on the activities and financial position of the Union.

(3) Subject to the provisions of Article 21(b), the conditions of appointment and employment of the staff necessary for the efficient performance of the tasks of the Office of the Union shall be fixed in the administrative and financial regulations referred to in Article 20.

Article 24

Legal Status

(1) The Union shall have legal personality.

(2) The Union shall enjoy on the territory of each member State of the Union, in conformity with the laws of that State, such legal capacity as may be necessary for the fulfilment of the objectives of the Union and for the exercise of its functions.

(3) The Union shall conclude a headquarters agreement with the Swiss Confederation.

Article 25

Auditing of the Accounts

The auditing of the accounts of the Union shall be effected by a member State of the Union as provided in the administrative and financial regulations referred to in Article 20. Such State shall be designated, with its agreement, by the Council.

Article 26

Finances

(1) The expenses of the Union shall be met from :
— the annual contributions of the member States of the Union;
— payments received for services rendered;
— miscellaneous receipts.

(2)(a) The share of each member State of the Union in the total amount of the annual contributions shall be determined by reference to the total expenditure to be met from the contributions of the member States of the Union and to the number of contribution units applicable to it under paragraph (3). The said share shall be computed according to paragraph (4).

(b) The number of contribution units shall be expressed in whole numbers or fractions thereof, provided that such number shall not be less than one-fifth.

(3)(a) As far as any State is concerned which is a member State of the Union on the date on which this Act enters into force with respect to that State, the number of contribution units applicable to it shall be the same as was applicable to it, immediately before the said date, according to the Convention of 1961 as amended by the Additional Act of 1972.

(b) As far as any other State is concerned, that State shall, on joining the Union, indicate, in a declaration addressed to the Secretary-General, the number of contribution units applicable to it.

(c) Any member State of the Union may, at any time, indicate, in a declaration addressed to the Secretary-General, a number of contribution units

different from the number applicable to it under subparagraph (a) or (b). Such declaration, if made during the first six months of a calendar year, shall take effect from the beginning of the subsequent calendar year; otherwise it shall take effect from the beginning of the second calendar year which follows the year in which the declaration was made.

(4)(a) For each budgetary period, the amount corresponding to one contribution unit shall be obtained by dividing the total amount of the expenditure to be met in that period from the contributions of the member States of the Union by the total number of units applicable to those States.

(b) The amount of the contribution of each member State of the Union shall be obtained by multiplying the amount corresponding to one contribution unit by the number of contribution units applicable to that State.

(5)(a) A member State of the Union which is in arrears in the payment of its contributions may not, subject to paragraph (b), exercise its right to vote in the Council if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years. The suspension of the right to vote does not relieve such State of its obligations under this Convention and does not deprive it of any other rights thereunder.

(b) The Council may allow the said State to continue to exercise its right to vote if, and as long as, the Council is satisfied that the delay in payment is due to exceptional and unavoidable circumstances.

Article 27

Revision of the Convention

(1) This Convention may be revised by a conference of the member States of the Union. The convocation of such conference shall be decided by the Council.

(2) The proceedings of a conference shall be effective only if at least half of the member States of the Union are represented at it. A majority of five-sixths of the member States of the Union represented at the conference shall be required for the adoption of a revised text of the Convention.

Article 28

Languages Used by the Office and in Meetings of the Council

(1) The English, French and German languages shall be used by the Office of the Union in carrying out its duties.

(2) Meetings of the Council and of revision conferences shall be held in the three languages.

(3) If the need arises, the Council may decide that further languages shall be used.

Article 29

Special Agreements for the Protection of New Varieties of Plants

Member States of the Union reserve the right to conclude among themselves special agreements for the protection of new varieties of plants, in so far as such agreements do not contravene the provisions of this Convention.

Article 30

Implementation of the Convention on the Domestic Level; Contracts on the Joint Utilisation of Examination Services

(1) Each member State of the Union shall adopt all measures necessary for the application of this Convention; in particular, it shall:

(a) provide for appropriate legal remedies for the effective defence of the rights provided for in this Convention;

(b) set up a special authority for the protection of new varieties of plants or entrust such protection to an existing authority;

(c) ensure that the public is informed of matters concerning such protection, including as a minimum the periodical publication of the list of titles of protection issued.

(2) Contracts may be concluded between the competent authorities of the member States of the Union, with a view to the joint utilisation of the services of the authorities entrusted with the examination of varieties in accordance with the provisions of Article 7 and with assembling the necessary reference collections and documents.

(3) It shall be understood that, on depositing its instrument of ratification, acceptance, approval or accession, each State must be in a position, under its own domestic law, to give effect to the provisions of this Convention.

Article 31

Signature

This Act shall be open for signature by any member State of the Union and any other State which was represented in the Diplomatic Conference adopting this Act. It shall remain open for signature until October 31, 1979.

Article 32

Ratification, Acceptance or Approval; Accession

(1) Any State shall express its consent to be bound by this Act by the deposit of:

(a) its instrument of ratification, acceptance or approval, if it has signed this Act; or

(b) its instrument of accession, if it has not signed this Act.

(2) Instruments of ratification, acceptance, approval or accession shall be deposited with the Secretary-General.

(3) Any State which is not a member of the Union and which has not signed this Act shall, before depositing its instrument of accession, ask the Council to advise it in respect of the conformity of its laws with the provisions of this Act. If the decision embodying the advice is positive, the instrument of accession may be deposited.

Article 33

Entry Into Force; Closing of Earlier Texts

(1) This Act shall enter into force one month after the following two conditions are fulfilled:

(a) the number of instruments of ratification, acceptance, approval or accession deposited is not less than five; and

(b) at least three of the said instruments are instruments deposited by States parties to the Convention of 1961.

(2) With respect to any State which deposits its instrument of ratification, acceptance, approval or accession after the conditions referred to in paragraph (1)(a) and (b) have been fulfilled, this Act shall enter into force one month after the deposit of the instrument of the said State.

(3) Once this Act enters into force according to paragraph (1), no State may accede to the Convention of 1961 as amended by the Additional Act of 1972.

Article 34

Relations Between States Bound by Different Texts

(1) Any member State of the Union which, on the day on which this Act enters into force with respect to that State, is bound by the Convention of 1961 as amended by the Additional Act of 1972 shall, in its relations with any other member State of the Union which is not bound by this Act, continue to apply, until the present Act enters into force also with respect to that other State, the said Convention as amended by the said Additional Act.

(2) Any member State of the Union not bound by this Act ("the former State") may declare, in a notification addressed to the Secretary-General, that it will apply the Convention of 1961 as amended by the Additional Act of 1972 in its relations with any State bound by this Act which becomes a member of

the Union through ratification, acceptance or approval of or accession to this Act ("the latter State"). As from the beginning of one month after the date of any such notification and until the entry into force of this Act with respect to the former State, the former State shall apply the Convention of 1961 as amended by the Additional Act of 1972 in its relations with any such latter State, whereas any such latter State shall apply this Act in its relations with the former State.

Article 35

Communications Concerning the Genera and Species Protected; Information to be Published

(1) When depositing its instrument of ratification, acceptance or approval of or accession to this Act, each State which is not a member of the Union shall notify the Secretary-General of the list of genera and species to which, on the entry into force of this Act with respect to that State, it will apply the provisions of this Convention.

(2) The Secretary-General shall, on the basis of communications received from each member State of the Union concerned, publish information on:

(a) the extension of the application of the provisions of this Convention to additional genera and species after the entry into force of this Act with respect to that State;

(b) any use of the faculty provided for in Article 3(3);

(c) the use of any faculty granted by the Council pursuant to Article 4(4) or (5);

(d) any use of the faculty provided for in Article 5(4), first sentence, with an indication of the nature of the more extensive rights and with a specification of the genera and species to which such rights apply;

(e) any use of the faculty provided for in Article 5(4), second sentence;

(f) the fact that the law of the said State contains a provision as permitted under Article 6(1)(b)(i), and the length of the period permitted;

(g) the length of the period referred to in Article 8 if such period is longer than the fifteen years and the eighteen years, respectively, referred to in that Article.

Article 36

Territories

(1) Any State may declare in its instrument of ratification, acceptance, approval or accession, or may inform the Secretary-General by written notification any time thereafter, that this Act shall be applicable to all or part of the territories designated in the declaration or notification.

(2) Any State which has made such a declaration or given such a notification may, at any time, notify the Secretary-General that this Act shall cease to be applicable to all or part of such territories.

(3) (a) Any declaration made under paragraph (1) shall take effect on the same date as the ratification, acceptance, approval, or accession in the instrument of which it was included, and any notification given under that paragraph shall take effect three months after its notification by the Secretary-General.

(b) Any notification given under paragraph (2) shall take effect twelve months after its receipt by the Secretary-General.

Article 37

Exceptional Rules for Protection Under Two Forms

(1) Notwithstanding the provisions of Article 2(1), any State which, prior to the end of the period during which this Act is open for signature, provides for protection under the different forms referred to in Article 2(1) for one and the same genus or species, may continue to do so if, at the time of signing this Act or of depositing its instrument of ratification, acceptance or approval of or accession to this Act, it notifies the Secretary-General of that fact.

(2) Where, in a member State of the Union to which paragraph (1) applies, protection is sought under patent legislation, the said State may apply the patentability criteria and the period of protection of the patent legislation to the varieties protected thereunder, notwithstanding the provisions of Articles 6(1)(a) and (b) and 8.

(3) The said State may, at any time, notify the Secretary-General of the withdrawal of the notification it has given under paragraph (1). Such withdrawal shall take effect on the date which the State shall indicate in its notification of withdrawal.

Article 38

Transitional Limitation of the Requirement of Novelty

Notwithstanding the provisions of Article 6, any member State of the Union may, without thereby creating an obligation for other member States of the Union, limit the requirement of novelty laid down in that Article, with regard to varieties of recent creation

existing at the date on which such State applies the provisions of this Convention for the first time to the genus or species to which such varieties belong.

Article 39

Preservation of Existing Rights

This Convention shall not affect existing rights under the national laws of member States of the Union or under agreements concluded between such States.

Article 40

Reservations

No reservations to this Convention are permitted.

Article 41

Duration and Denunciation of the Convention

(1) This Convention is of unlimited duration.

(2) Any member State of the Union may denounce this Convention by notification addressed to the Secretary-General. The Secretary-General shall promptly notify all member States of the Union of the receipt of that notification.

(3) The denunciation shall take effect at the end of the calendar year following the year in which the notification was received by the Secretary-General.

(4) The denunciation shall not affect any rights acquired in a variety by reason of this Convention prior to the date on which the denunciation becomes effective.

Article 42

Languages; Depositary Functions

(1) This Act shall be signed in a single original in the French, English and German languages, the French text prevailing in case of any discrepancy among the various texts. The original shall be deposited with the Secretary-General.

(2) The Secretary-General shall transmit two certified copies of this Act to the Governments of all States which were represented in the Diplomatic Conference that adopted it and, on request, to the Government of any other State.

(3) The Secretary-General shall, after consultation with the Governments of the interested States which were represented in the said Conference, establish

official texts in the Arabic, Dutch, Italian, Japanese and Spanish languages and such other languages as the Council may designate.

(4) The Secretary-General shall register this Act with the Secretariat of the United Nations.

(5) The Secretary-General shall notify the Governments of the member States of the Union and of

the States which, without being members of the Union, were represented in the Diplomatic Conference that adopted it of the signatures of this Act, the deposit of instruments of ratification, acceptance, approval and accession, any notification received under Articles 34(2), 36(1) and (2), 37(1) and (3) or 41(2) and any declaration made under Article 36(1).

[For the testimonium and signatures, see p. 328 of this volume.]

EN FOI DE QUOI, les soussignés, dûment autorisés à cette fin, ont signé la présente Convention.
FAIT à Genève, le vingt-trois octobre mil neuf cent soixante-dix-huit. *

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto, have signed this Convention.
DONE at Geneva, this twenty-third day of October, one thousand nine hundred and seventy-eight. *

ZU URKUND DESSEN haben die hierzu gehörig befugten Unterzeichneten dieses Übereinkommen unterschrieben.
GESCHEHEN zu Genf am dreiundzwanzigsten Oktober neunzehnhundertachtundsiebzig. *

POUR LA RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE
FOR THE FEDERAL REPUBLIC OF GERMANY
FÜR DIE BUNDESREPUBLIK DEUTSCHLAND

Per Fischer

POUR LA CONFÉDÉRATION SUISSE
FOR THE SWISS CONFEDERATION
FÜR DIE SCHWEIZERISCHE EIDGENOSSENSCHAFT

W. Gfeller

POUR LA RÉPUBLIQUE FRANÇAISE
FOR THE FRENCH REPUBLIC
FÜR DIE FRANZÖSISCHE REPUBLIK

B. Laclavière

* *Note/Note/Hinweis*

Toutes les signatures ont été apposées le 23 octobre 1978, sauf si une autre date est indiquée.

All signatures were affixed on October 23, 1978, unless otherwise indicated.

Falls nichts anderes angegeben, wurde die Unterzeichnung am 23. Oktober 1978 vorgenommen.

POUR LA RÉPUBLIQUE ITALIENNE
FOR THE ITALIAN REPUBLIC
FÜR DIE ITALIENISCHE REPUBLIK

Italo Papini

POUR LA RÉPUBLIQUE SUD-AFRICAINE
FOR THE REPUBLIC OF SOUTH AFRICA
FÜR DIE REPUBLIK SÜDAFRIKA

J. F. van Wyk

POUR LE ROYAUME DE BELGIQUE
FOR THE KINGDOM OF BELGIUM
FÜR DAS KÖNIGREICH BELGIEN

P. Noterdaeme

POUR LE ROYAUME DE SUÈDE
FOR THE KINGDOM OF SWEDEN
FÜR DAS KÖNIGREICH SCHWEDEN

Sigvard Mejegård

[12 December 1978 — 12 décembre 1978]

POUR LE ROYAUME DES PAYS-BAS
FOR THE KINGDOM OF THE NETHERLANDS
FÜR DAS KÖNIGREICH DER NIEDERLANDE

W. van Soest

POUR LE ROYAUME-UNI DE GRANDE-BRETAGNE
ET D'IRLANDE DU NORD
FOR THE UNITED KINGDOM OF GREAT BRITAIN
AND NORTHERN IRELAND
FÜR DAS VEREINIGTE KÖNIGREICH
GROSSBRITANNIEN UND NORDIRLAND

Patrick Murphy

POUR LE ROYAUME DU DANEMARK
FOR THE KINGDOM OF DENMARK
FÜR DAS KÖNIGREICH DÄNEMARK

Halvor Skov

POUR L'ÉTAT ESPAGNOL
FOR THE SPANISH STATE
FÜR DEN SPANISCHEN STAAT

POUR LES ÉTATS-UNIS D'AMÉRIQUE
FOR THE UNITED STATES OF AMERICA
FÜR DIE VEREINIGTEN STAATEN VON AMERIKA

Harvey J. Winter

POUR LES ÉTATS-UNIS DU MEXIQUE
FOR THE UNITED MEXICAN STATES
FÜR DIE VEREINIGTEN MEXIKANISCHEN STAATEN

R. Martínez

[25 July 1979 — 25 juillet 1979]

POUR LA NOUVELLE-ZÉLANDE
FOR NEW ZEALAND
FÜR NEUSEELAND

E. Farnon

[25 July 1979 — 25 juillet 1979]

POUR L'IRLANDE
FOR IRELAND
FÜR IRLAND

Seán Gaynor

[27 September 1979 — 27 septembre 1979]

POUR LE JAPON
FOR JAPAN
FÜR JAPAN

Masao Sawaki

[17 October 1979 — 17 octobre 1979]

POUR LE CANADA
FOR CANADA
FÜR KANADA

D. S. McPhail

[31 October 1979 — 31 octobre 1979]

NOTIFICATIONS AND DECLARATIONS MADE UPON RATIFICATION AND ACCEPTANCE (A)

FRANCE

[TRANSLATION — TRADUCTION]¹

Referring to article 36, paragraph (1), of the Convention, the Government of France declares that it is applicable to the territory of the French Republic, including the Overseas Departments and Territories.

JAPAN

“Japan intends to exercise its rights under Article 3(3) of the Convention.”

NETHERLANDS

“[T]he Kingdom of the Netherlands, in accordance with article 3, paragraph (3), of the Convention, will limit the benefit of the protection to the nationals and to the natural and legal persons meant in the said paragraph.”

*UNITED STATES
OF AMERICA*

“Please be further notified that the United States of America will apply the provisions of Article 37, paragraphs (1)

NOTIFICATIONS ET DÉCLARATIONS FAITES LORS DE LA RATIFICATION ET DE L'ACCEPTATION (A)

FRANCE

« Se référant à l'article 36, paragraphe 1, de la Convention, le Gouvernement français déclare que celle-ci est applicable au territoire de la République française, y compris les départements et territoires d'outre-mer. »

JAPON

[TRADUCTION — TRANSLATION]¹

Le Japon entend exercer la faculté prévue à l'article 3.3 de ladite Convention internationale.

PAYS-BAS

[TRADUCTION — TRANSLATION]¹

Le Royaume des Pays-Bas, conformément au paragraphe 3 de l'article 3 de la Convention, limite le bénéfice de la protection aux nationaux et aux personnes physiques et morales visés à ce paragraphe.

*ÉTATS-UNIS
D'AMÉRIQUE*

[TRADUCTION — TRANSLATION]¹

En outre, veuillez noter que les Etats-Unis d'Amérique appliqueront les dispositions de l'article 37, paragraphes 1 et 2,

¹ Translation supplied by the Secretariat of the International Union for the Protection of New Varieties of Plants — Traduction fournie par le Secrétariat de l'Union internationale pour la protection des obtentions végétales.

¹ Traduction fournie par le Secrétariat de l'Union internationale pour la protection des obtentions végétales — Translation supplied by the Secretariat of the International Union for the Protection of New Varieties of Plants.

and (2), in regard to protection of the same genus or species under different forms and also in regard to the patentability criteria and period of protection applicable to normally asexually reproduced plant varieties.”

en ce qui concerne la protection d'un même genre ou d'une même espèce sous des formes différentes et également en ce qui concerne les critères de brevetabilité et la durée de la protection applicables aux variétés végétales normalement multipliées par voie végétative.
